



9200/1646

Dkt. 0575/55873/JPW/AJM/AAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Anne Marie Schmidt, et al.
U.S. Serial No.: 09/167,705 Examiner: Janet L. Andres
Filed : October 6, 1998 Group Art Unit: 1646
For : EXTRACELLER RAGE BINDING PROTEIN (EN-RAGE)
AND USES THEREOF

#28

1185 Avenue of the Americas
New York, New York
December 24, 2003

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION UNDER 37 C.F.R. §1.181(a)
TO WITHDRAW HOLDING OF ABANDONMENT

This is a Petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment as set forth in the Notice of Abandonment issued October 29, 2003 in connection with the above-identified application. The October 29, 2003 Notice indicates that the subject application was abandoned for applicants' alleged failure to timely file new formal drawings. A copy of the October 29, 2003 Notice is attached as **Exhibit 1**. 37 C.F.R. §1.181(f) provides a period of two months from the mailing date of the Notice to file a petition. Therefore, a response to the October 29, 2003 Notice is due December 29, 2003. Accordingly, this Petition is being timely filed.

A petition under 37 C.F.R. §1.181(a) must set forth the facts involved and the point or points to be reviewed and the action requested.

Applicants: Ann Marie Schmidt, et al.
Serial No.: 09/167,705
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This Petition is being filed promptly after applicants' undersigned attorney became aware that the U.S. Patent Office has no evidence of receipt of the new, corrected formal drawings.

A Notice of Allowability was issued in the subject application on June 6, 2003 requiring applicants to submit new, corrected formal drawings by September 6, 2003. However, since September 6, 2003 fell on a Saturday, a response filed on the next business day, i.e. Monday, September 8, 2003, was considered timely. A copy of the June 6, 2003 Notice of Allowability is attached as **Exhibit 2**.

In response to the June 6, 2003 Notice of Allowability, applicants timely submitted new, corrected formal drawings on September 8, 2003.

As evidence of that submission, applicants attach as **Exhibit 3** a copy of the Communication Forwarding Formal Drawings with a certificate of mailing dated September 8, 2003, which Communication includes as **Exhibit A** a copy of the original two (2) sheets of new, corrected formal drawings for Figures 1 and 5. Furthermore, applicants attach as **Exhibit 4** a copy of the postcard which accompanied the Communication and new, corrected formal drawings in order for the U.S. Patent and Trademark Office to acknowledge receipt thereof. The postcard bears a Patent Office stamp indicating receipt of the September 8, 2003 Communication on September 11, 2003. Moreover, applicants attach as **Exhibit 5** a copy of the undersigned attorney's law firm's internal docketing records for the subject application. This record indicates that the required new, corrected formal drawings were timely mailed on September 8, 2003.

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Accordingly, applicants note that the requirements of 37 C.F.R. §1.181(a) have been met and respectfully request that the holding of abandonment be withdrawn and the subject application proceed to issuance.

Applicants also attach as **Exhibit 6** a new set of corrected formal drawings which includes two (2) sheets of new, corrected formal drawings for Figures 1 and 5, since according to the October 29, 2003 Notice of Abandonment, the original corrected formal drawings submitted on September 8, 2003 have not been received.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Petition. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to : Mail Stop Petition, Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450.

Alan J. Morrison
Reg. No. 37,399

Date

12/24/03

John P. White
Registration No. 28,678
Alan J. Morrison
Registration No. 37,399
Attorneys for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
Tel. No. (212) 278-0400

55873

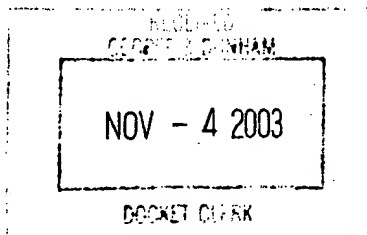
Ex-1


**UNITED STATES DEPARTMENT OF
Patent and Trademark Office**

 Address: COMMISSIONER OF PATENTS AND T
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET
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09/167, 705



EXAMINER

ART UNIT

PAPEF

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

Petition to Re

- ☐ Applicant's failure to timely file a proper response to the Office letter mailed on _____.
- ☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed response was received on _____, but it does not constitute a proper response to the rejection.
- (A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC))
- ☐ No response has been received.
- ☐ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing of the Notice of Allowance.
- ☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.
- ☐ The submitted issue fee of \$_____ is insufficient. The issue fee required by 37 CFR 1.18 is \$_____.
- ☐ The issue fee has not been received.
- ☒ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.
- ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.
- ☐ The proposed new formal drawings filed _____ are not acceptable.
- ☒ No proposed new formal drawings have been received.
- ☐ The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity) under 37 CFR 1.34(a) upon the filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the time for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below:

**ABANDONMENT
CONTACT PERSON IS:
TOM HAWKINS**

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA 22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website - <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

55873

EX 2

JPW

Notice of Allowability

Application No.

09/167,705

Examiner

Janet L. Andres

Applicant(s)

SCHMIDT ET AL.

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

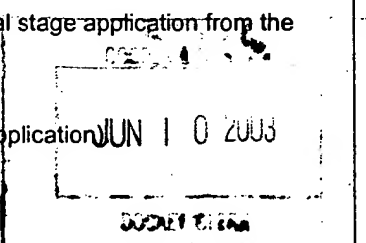
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 31 March 2003.
2. ☒ The allowed claim(s) is/are 47, 50, 55-60, 62-68, 71 and 72, sequentially renumbered 1-17.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). *Drawings*
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). *Issue Fee: 9/8/2003*
- (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

6/6/2003

9/8/2003

SML



Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS must be submitted.
- (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☒ to Paper No. 13.
- (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
- (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- 1 ☐ Notice of References Cited (PTO-892)
- 3 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 5 ☐ Information Disclosure Statements (PTO-1449), Paper No. _____.
- 7 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 2 ☐ Notice of Informal Patent Application (PTO-152)
- 4 ☒ Interview Summary (PTO-413), Paper No. 25.
- 6 ☒ Examiner's Amendment/Comment
- 8 ☐ Examiner's Statement of Reasons for Allowance
- 9 ☐ Other

Art Unit: 1646

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Alan Morrison on 28 May 2003.

The application has been amended as follows:

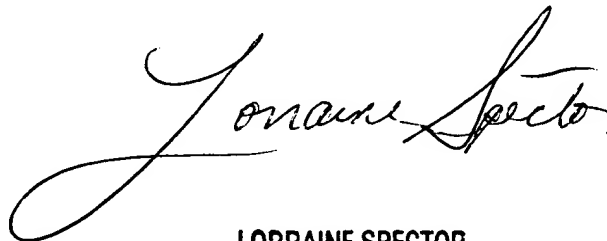
The priority data in the first line of the specification was deleted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L. Andres whose telephone number is 703-305-0557. The examiner can normally be reached on 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 703-308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Janet L. Andres, Ph.D.
June 5, 2003



LORRAINE SPECTOR
PRIMARY EXAMINER

Examiner-Initiated Interview Summary

Application No.

09/167,705

Applicant(s)

SCHMIDT ET AL.

Examiner

Janet L. Andres

Art Unit

1646

All Participants:

(1) Janet L. Andres.

(2) Alan Morrison.

Status of Application: amended

(3) _____.

(4) _____.

Date of Interview: 28 May 2003

Time: 2:00PM

Type of Interview:

☒ Telephonic

☐ Video Conference

☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

Exhibit Shown or Demonstrated: ☐ Yes ☒ No

If Yes, provide a brief description:

Part I.

Rejection(s) discussed:

none

Claims discussed:

none

Prior art documents discussed:

none

Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

Clarification was requested as to the nature of the priority claim added in amendment E. Applicant's representative stated that no priority was to be claimed and it was agreed that the priority claim would be deleted by Examiner's Amendment.

Part III.

- ☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.
- ☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Examiner/SPE Signature)

(Applicant/Applicant's Representative Signature – if appropriate)

EX 3

Dkt. 55873/JPW/YG

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Anne Marie Schmidt, et al.

Serial No. : 10/167,705

Examiner: J. Andres

Filed : October 6, 1998

Group Art Unit: 1646

For : EXTRACELLULAR RAGE BINDING PROTEIN (EN-RAGE) AND
USES THEREOF

Date of Notice

of Allowance : June 6, 2003

Confirmation No.: 1656

1185 Avenue of the Americas
New York, New York 10036
September 8, 2003

MAIL STOP PGPUB DRAWINGS
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

COMMUNICATION FORWARDING FORMAL DRAWINGS

This Communication is submitted in response to the Notice of Allowability dated June 6, 2003 which was issued by the U.S. Patent and Trademark Office in connection with the above-identified application. A response to the June 6, 2003 Notice of Allowability is due September 8, 2003. Accordingly, this Communication is being timely filed.

In the June 6, 2003 Notice, the Examiner required applicants to submit new formal drawings including the drawing corrections specified in the March 22, 2000 Notice of Draftsperson's Patent Drawing Review. The March 22, 2003 Drawing Review stated that for Figure 1 the photograph is of poor quality, for Figure 5 the left margin is not acceptable and the numbers and reference characters are not plain and legible.

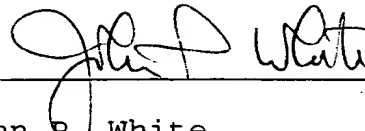
In response, applicants attach hereto as Exhibit A two(2) sheets of new, corrected formal drawings for Figures 1 and 5, including one photograph for (Figure 1).

Anne Marie Schmidt, et al.
Serial No.: 09/167,705
Filed: October 6, 1998
Page 2

Applicants note that the U.S. Patent and Trademark Office waived 37 C.F.R. §1.84(b)(1) in a notice published in the August 4, 1998 Official Gazette. Therefore, a petition under 37 C.F.R. §1.84(b)(1) including three sets of photographs mounted on bristol board and a petition fee of 130.00 is no longer required for photographs to be accepted.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



John P. White
Registration No. 28,678
Attorney for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: MAIL STOP PGPUB DRAWINGS, Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.



9/8/03

John P. White
Reg. No. 28,678

Date

Ex A

1/5

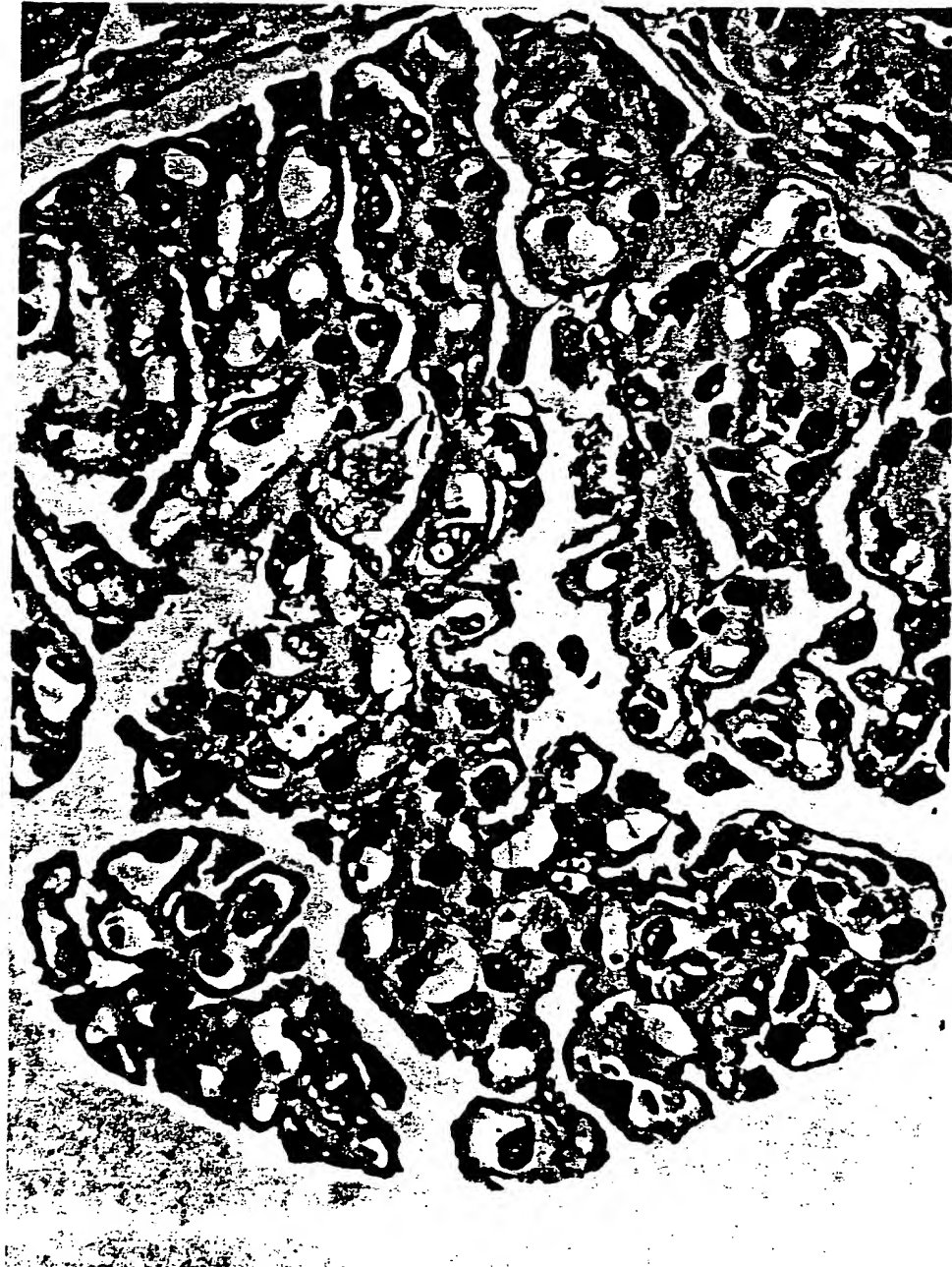


FIGURE 1

5/5

FIGURE 5

ATGACTAAGCTGGAGGACCACCTGGAGGGAATCAACATCTTC
CACCACTACTCCGTTCCGGTGGGCAATTCGACACCCTCAACAAG
CGTGAGCTGAAGCAGCTGATCACAAAGGGAACCTCCCAAACCCCT
CCAGAACACCAAGACCAACCTACCATTTGACAAATATTCCAAGA
CCTGGATGCCGATAAAGACGGAGCCGTCAGCTTTGAGGAATTCGT
AGTCCTGGTGTCCAGGGTGTGAAACAGCCACATAGATATCCA
CAAAGAGTAGGTTTCCAGCAATGTTCCCAAGAAGACTTACCCCTTCT
CCTCCCCTGAGGCTGCTCCCCGAGGAGAGAGAAATTATAAACGTAC
TTTGGCAAATTCTTAGCAAATAAAATAAAATAAA

EX 4

Applicant Anne Marie Schmidt, et al.

Client Columbia University(0575) File No. 55873 Atty. JPW/YG

Date September 8, 2003

Kindly acknowledge receipt of the accompanying
Communication Forwarding Formal Drawings in connection with
Anne Marie Schmidt, et al., EXTRACELLULAR RAGE BINDING
PROTEIN (EN-RAGE) AND USES THEREOF, U.S. Serial No.
09/167,705, filed October 6, 1998, including two (2) sheets
of formal drawings (with one (1) photograph for Figure 1)
as Exhibit A, and Certificate of Mailing dated September 8,
2003.

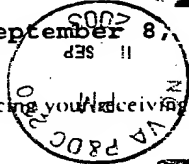
MAIL

DATE: September 8, 2003

NO. 10



by placing your receiving date stamp hereon and returning to us



EX 5

Pocketing

Applicant Anne Marie Schmidt, et al. MPL
Client Columbia University(0575) File No. 55873 Atty. JPW/YG
Date September 8, 2003

Kindly acknowledge receipt of the accompanying
Communication Forwarding Formal Drawings in connection with
Anne Marie Schmidt, et al., EXTRACELLULAR RAGE BINDING
PROTEIN (EN-RAGE) AND USES THEREOF, U.S. Serial No.
09/167,705, filed October 6, 1998, including two (2) sheets
of formal drawings (with one (1) photograph for Figure 1)
as Exhibit A, and Certificate of Mailing dated September 8,
2003.

DUE DATE: September 8, 2003

by placing your receiving date stamp hereon and returning to us.

BEST AVAILABLE COPY

FIGURE 5

ATGACTAAGCTGGAGGACCACTGGAGGGAATCATCAACATCTTC
CACAGTACTCCGTTCCGGTGGGGCATTTTCGACACCCCTCAACAAG
CGTGAGCTGAAGCAGCTGATCACAAAGGAACTTCCCAAAACCCCT
CCAGAACACCAAGACCAACCTACCATTTGACAAATATTCCAAGA
CCTGGATGCCGATAAGACGGAGCCGTCAGCTTTGAGGAATTCGT
AGTCCTGGTGTCACAGGTGCTGAAACAGCCACATAGATATCCA
CAAAGAGTAGGTTTCCAGCAATGTTCCCAAGAAGACTTACCCCTTCT
CCTCCCTGAGGCTGCTCCCGAGGGAGAGAGAAATTATAACGTAC
TTTGGCAAAATTCTTAGCAAAAAAATAAAAAA